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ABSTRACT

Noting that the Federal Republic of Germany, after Japan and the USA, is the world's largest market for newspapers and magazines, this booklet discusses freedom of the press, press laws, and the press in the new federal states. After a brief account of the "facts and figures" of the newspaper and magazine market in the Federal Republic, the booklet presents an essay ("There Shall Be No Censorship" by Burkhard Schaffeld). The booklet then discusses land press laws, the main points of press law, right to information, duty of thoroughness, refusal of testimony and confiscation, internal freedom of the press, and the press in the new federal states. A 32-item list of recommended literature, the Press Law for the Free and Hanseatic City of Hamburg, and the German Press Council's Press Code with guidelines for editorial work (as of 1992) are attached. (RS)

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Press Laws.

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Documents on Politics and Society in the Federal Republic of Germany

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Press Laws

Documents
on Politics and Society
in the
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3

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Introduction

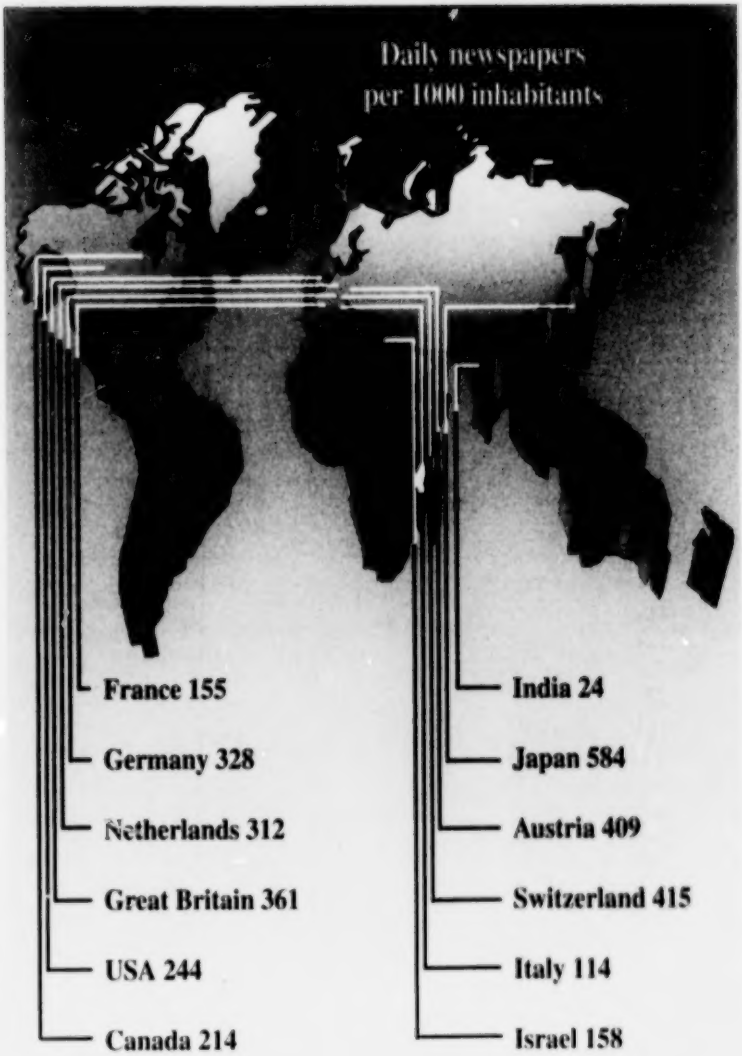
Facts and figures

The Federal Republic of Germany, after Japan and the USA, is the world's largest market for newspapers and magazines.

In 1992 more than 1,600 daily newspapers had a total circulation of over 26 million copies. 82 % of adults read newspapers. Around 12,000 permanent staff make sure that they leave the presses. Typical of German dailies is the large local section. In this field they are still well ahead of radio and TV as carriers of information and advertising.

In Germany over 8,000 magazines are published, most of them weekly or monthly. Almost every teenager or adult reads some kind of magazine. About 6,000 permanent employees work on these. Some magazines have a circulation of over a million, or even several million copies. In total they reach more readers than all other target-group media. On the other hand, over the past decade, new specialist magazines have been more successful than more generally-oriented ones. While, for example, the market for pictorials became tighter and some periodicals closed down, new women's or art magazines as well as travel and business journals all succeeded in establishing themselves. This specialization became a goldmine for publishers in a society so varied in its working and leisure habits, its lifestyles and tastes.

The reunification of Germany has led to expansion and change on the press scene. Almost all major and large publishing houses have entered the market in the new federal states. They changed the old newspapers, etc., in line with public requirements, or else they launched new titles. Some well-known magazines in the former East Germany have even become successfully established in the combined German market. Common interests are becoming increasingly popular; this is reflected in the unexpected success of new German weeklies oriented toward politics, business and cultural matters.



Comparison of foreign media density
1992 figures

Source: BDZV/FEJ

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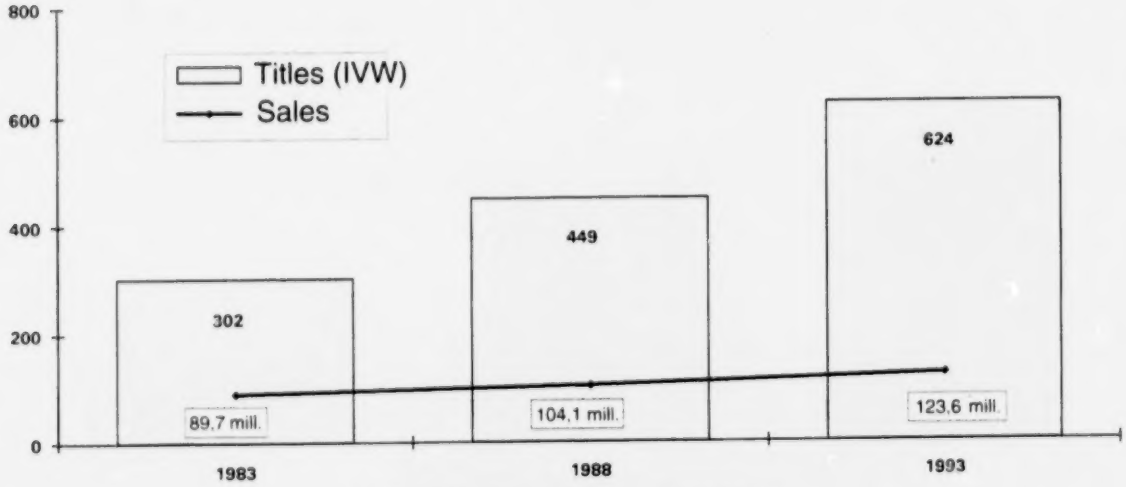
DEVELOPMENT OF PUBLIC PERIODICALS



Source: VDZ Die Zeitschriften / IVW

"There shall be no censorship"

by Burkhard Schaffeld*

"Freedom of the press and freedom of reporting by means of broadcasts and films are guaranteed. There shall be no censorship. These rights are limited by the provisions of the general laws, the provisions of law for the protection of youth, and by the right to inviolability of personal honour." Thus it is written in Art. 5 of the Basic Law (BL). This tenet is at the core of all press law. According to the Federal Constitutional Court's ruling, it is of "fundamental significance for all public, political and constitutional activity."

The Federal Constitutional Court, in a 1966 fundamental judgment, emphasises that freedom of the press is enshrined in the constitution not only as a subjective basic right but also that, in addition, Art. 5 paragraph 1 BL guarantees the "free press as an institution". The judgment reads: "A free press, independent of the state and not subject to censorship, is one of the fundamental elements of the democratic state; in particular, a free, regular political press is indispensable for modern democracy. If the citizen is to make political decisions he must be on the one hand fully informed, but he must also be able to recognize and compare opinions expressed by others. The press maintains this constant discussion ... Public opinion is articulated via the press ... In a representative democracy the press is both a constant link and an instrument of supervision between the people and its elected representatives in parliament and government."

The recognition on the part of the Federal Constitutional Court that the press fulfils an indispensable social function is reflected in article 3 of Land press laws. In the press law for Land Rheinland-Palatinate, for example, the article reads: "The Press fulfils a public function in that it procures and disseminates news in matters of public interest, declares an opinion, voices criticism or participates in the forming of opinion in other ways."

The principle of proportionateness

Even though, according to Article 5 paragraph 2 BL, freedom of the press is not guaranteed without limitation but is rather limited "by the provisions of the general laws, the provisions of laws for the protection of youth, and by

* The author is one of the Federal Association of Newspaper Publishers' legal advisers.

the right to inviolability of personal honour", the limitation of this constituent right of a free and democratic society is not placed at the disposal of federal or Land legislators.

The legislator may not in any way impinge upon the substance of press freedom. In a fundamental judgment by the Federal Constitutional Court we read: "This basic definition of freedom of opinion means that it would not be consistent to leave any relativization of the scope of this particular basic right to a simple legal act ... The limiting effect on basic rights of these general laws must in turn be seen in the light of the significance of these basic rights and must be interpreted in such a way that their specific value is retained at all cost.The mutual relationship between basic right and general law is therefore not to be seen as a unilateral limitation of the validity of basic rights by general laws; on the contrary, there is a reciprocal effect in that, while the wording of general laws places limits upon basic rights, they in turn must be interpreted in the light of the validity of these rights in a liberal, democratic society, thus themselves being limited in their power to limit basic rights."

Are tighter laws needed?

In spite of this clear situation in constitutional terms, there are from time to time calls for a tighter rein on the press. It is intolerable, they say, that journalists leak personal details and then hide behind the right to refuse to give evidence. Personal details must be more effectively protected and violations must be punished more severely.

Such demands are just a new form of the old motto "death to the messenger bringing bad news". Contrary to the impression those involved wish to create with their call for tighter laws, the public already has a measure of protection against unjustified press attacks. Indeed, there are a number of ways to protect oneself.

Correcting defects in the system

In this connection I should first of all mention the German Press Council, a self-monitoring body set up by the press itself, which has the task of correcting defects in the press system. Any citizen who thinks he has been unfairly treated by the press can make a complaint to the Council. The decision on whether to pursue this petition is then made by the Council's Complaints Committee. However, the Council is no "paper tiger" as is sometimes claimed. This is proved by the number of complaints, i.e. between

150 and 200, which are received each year. If the accusation is found to be valid the publication involved is sent a written warning. In serious cases the Council publishes a censure naming the publication. It sees it as a matter of professional ethics for the guilty party itself to publish this censure.

In addition the Press Council has drawn up a "Press Code" containing the generally-recognized rules of the profession. It has also made a large number of recommendations for press practice during its 20-year life. These are documented in the "Guidelines for editorial activity", which were designed to complement the Press Code. Among the 16 publicistic principles making up the Press Code is, for example, "respect for the truth and accurate informing of the general public". This is described as the overriding principle of the press. News and assertions which subsequently turn out to be incorrect are to be promptly rectified in an appropriate manner by the publication involved.

The publishing of unfounded allegations is "contrary to journalistic decorum". Respect for the personality, private life and intimate sphere of persons is one of the major professional duties of the press. Thus such details may only be mentioned if private behaviour touches upon public interests. However, the Press Council knows of no case in which this Press Code rule has been breached. Politicians' behaviour, the subject of press reports, always impinged upon public interests.

The right of reply, withdrawal, action to restrain interference, libel proceedings

Legal channels are also open to those involved. People have the right to publish a reply to assertions of facts made by the press. This reply must be printed regardless of its verity should the legal conditions be fulfilled. In addition, if the press assertions turn out to be untrue, the victim may demand that they be withdrawn and an apology printed. In the particular case of libellous press remarks the law allows the victim the right to take action to restrain interference.This right, unlike those of reply and withdrawal, not only applies to assertions of facts but also to expressions of opinion. In serious libel cases, according to the law, there is also the option of civil proceedings to secure damages.

Should a press allegation constitute a criminal act, for example libel or malicious defamation (üble Nachrede), the victim, in addition, enjoys protection under penal law. In this regard politicians are strongly protected against damage to their honour. According to paragraph 187 a of the German Penal Code, defamation of character, whether in public, at a meeting or by dis-

tributed written means, of a person in political life, for reasons connected with his or her position, and which may seriously impede the exercise of that position, shall be punished by imprisonment.

Land Press Laws: a survey

Special guidelines for press activities are contained in press laws for each federal state.

The following Land press laws are in force:

Baden-Württemberg:	Gesetz über die Presse vom 14. Januar 1964 (Law on the Press of 14 January 1964)
Bavaria:	Gesetz über die Presse vom 3. Oktober 1949 (Law on the Press of 3 October 1949)
Berlin:	Berliner Pressegesetz vom 15. Juni 1965 (Berlin Press Law of 15 June 1965)
Brandenburg:	Pressegesetz des Landes Brandenburg vom 13. Mai 1993 (Press Law of Land Brandenburg of 13 May 1993)
Bremen:	Gesetz über die Presse vom 16. März 1965 (Law on the Press of 16 March 1965)
Hamburg:	Hamburgisches Pressegesetz vom 29. Januar 1965 (Hamburg Press Law of 29 January 1965)
Hesse:	Hessisches Gesetz über Freiheit und Recht der Presse vom 23. Juni 1949 (Hessian Law on Press Freedom and Rights of 23 June 1949)
Mecklenburg-Western Pomerania:	Landespressegesetz vom 6. Juni 1993 (Land Press Law of 6 June 1993)
Lower Saxony:	Niedersächsisches Pressegesetz vom 22. März 1965 (Lower Saxony Press Law of 22 March 1965)
North Rhine-Westphalia:	Pressegesetz für das Land Nordrhein-Westfalen vom 24. Mai 1966 (Press Law for Land North Rhine-Westphalia of 24 May 1966)

Rhineland-Palatinate:	Landesgesetz über die Presse vom 14. Juni 1965 (Land Press Law of 14 June 1965)
Saarland:	Saarländisches Pressegesetz vom 12. Mai 1965 (Saarland Press Law of 12 May 1965)
Saxony:	Sächsisches Gesetz über die Presse vom 3. April 1992 (Saxon Press Law of 3 April 1992)
Saxony-Anhalt:	Landespressegesetz vom 14. August 1991 (Land Press Law of 14 August 1991)
Schleswig-Holstein:	Gesetz über die Presse vom 19. Juni 1964 (Press Law of 19 June 1964)
Thuringia:	Thüringer Pressegesetz vom 31. Juli 1991 (Thuringian Press Law of 31 July 1991).

The Hamburg Press Law is reproduced below. Two of the four largest German periodical publishing firms are based here (Gruner+Jahr, Bauer). Major German weekly publications have been produced in Hamburg, the press metropolis, for twenty years (DER SPIEGEL, DIE ZEIT), several illustrated magazines (among them the largest, "Stern"), Germany's biggest-selling tabloid (BILD), the largest radio and TV magazine ("Hör zu") and so on.

The Hamburg Press Law is representative of those of the other Länder, as they are basically similar. Thus a Federal framework press law has not been necessary up to now.

The main points of Press Law

The following press law rules above all are important for the work of journalists:

Right to information

So long as the basic right of freedom of the press – of which Paragraph 4 of the Land press laws is an important component – is not denied an organ of the press by ruling of the federal Constitutional Court in proceedings governed by Article 18 of the Basic Law of the Federal Republic of Germany, each and every organ of the press can invoke its right of access to informa-

tion within the terms of Land press laws. Neither can it be argued that the so-called "sensation-mongering" press does not fulfil a public task and thus has no claim to access to information. In modern society, entertainment has an important publicistic function, too.

Duty of thoroughness

The obligation to exercise thoroughness runs parallel to the special rights of the press. This represents a commitment to report as truthfully as possible. Every journalist has a duty to check the facts at his disposal ("for truth, content and origin") with a professional thoroughness to be expected of a conscientious reporter. The more incisive a journalistic report is in its effects for the party concerned, the more thoroughly the truth of its contents must be verified. In the event of doubt, the journalist has a duty to check again.

Masthead

Each and every published work governed by the respective Land press law must bear the name of the person or firm and the address of the printer and of the publisher; periodicals must additionally carry the name and address of the responsible journalist or editor.

Duty staff editor

It is the responsibility of the duty staff editor to check the legality of the entire material intended for publication and to prevent publication of culpable material. It is required of the duty staff editor to acquire personal knowledge of the contents of all matter for publication within his specialised field. It is an infringement of his duty even to delegate this important responsibility to other persons.

Classification requirement

The prestige and credibility of the press rest on the principle by which clear distinction is made between a newspaper's textual content and advertising columns; it is in the newspaper's own interests – including commercial interests – to preserve this distinction.

Refusal of testimony and confiscation

The press lives from information. It must be able to protect informants if its sources are not to dry up. The right to refuse testimony is dealt with on a Federal basis, and it is contained in both paragraph 53 of the Criminal Trial Procedure and paragraph 383 of the Civil Trial Procedure:

"The following are entitled to refuse testimony: Persons who are or were professionally involved in the production, publication or distribution of periodical literature, radio or TV programmes, may refuse to give evidence as to the person of the author, sender or confidant of items or documents as well as to their contents, in so far as these items, documents and contents are intended for publication."

Recordings entrusted to a journalist by an informant are excepted from confiscation pursuant to paragraph 97 of the Criminal Trial Procedure.

The right to refuse testimony and the ban on confiscation protect journalists solely against the surrender of material supplied by an informant. In contrast, the journalist's own observations (e.g. of a crime) and the products of his or her own research must be made known to the police.

"Internal freedom of the press" according to the Betriebsverfassungsgesetz

The Betriebsverfassungsgesetz (Staff Representation Act) mainly deals with the social, personnel and (to a limited extent) economic rights (or co-determination) of the employees' representatives as against the employers. However, according to paragraph 118 of the Act, this does not apply to firms in the press field in so far as the direction of the publication is involved. This features, for example, in the sacking of an editor in connection with the paper's tendency. Article 5 of the Basic Law protects the publisher's right to establish the attitude of his newspaper, even if it does not concur with that of his staff. Whether and to what extent the journalists have or should have a say in this matter, i.e. "internal press freedom", has been the subject of long and controversial debate, especially during the 1970s and 1980s. There is as yet no statutory agreement as a result of this debate.

The Press in the new federal states

The reunification of Germany in 1990 changed the press scene in the Federal Republic, and particularly in the new federal states.

Statistically speaking, newspapers and magazines were as popular among the 16 million or so citizens of the former GDR as in Japan, i.e. more than anywhere else in the world. As propaganda instruments of the communist dictatorship their content was tightly controlled and their price highly subsidized by the state. It is open to question how many of the subscribers actually read these organs, as reader analysis and marketing was not a high

priority. From a technical point of view, newspaper production methods were as out-of-date as in most other fields (lead type).

The "Wende" or change towards a democratic and free market press came immediately following the opening of the Wall at the end of 1989. At first, prior to the first free elections in the GDR, in March 1990, West German publishers sent lorryloads of their products to their Eastern countrymen. The existing newspapers suffered often dramatic losses of readers, even though they declared themselves to be "independent".

The "pre-Wende" publications sought support from West German competitors in order to survive, both economically and in journalistic terms.

In this regard, since German reunification, the Treuhand had a major role to play. It administered the former "people's enterprises", which were to be privatized. The 14 regional newspapers, previously organs of the ruling party, were the subject of most interest on the part of purchasers. Their readers remained faithful. Circulation losses were relatively light (15–20 %). In principle the Treuhand allowed each West German firm to buy only one regional newspaper, but this did not prevent the latter from retaining a practical monopoly in their circulation areas. The economic situation, particularly the level of advertising, seems too weak, even three years after German unity, to allow two or more modern daily papers to survive in one area.

Only a few magazines from the former GDR were able to live on the Federal Republic and gain regular readers in the old Länder also. The most remarkable examples of this are a satirical paper ("Eulenspiegel") and a serious weekly for politics, culture and economics ("Wochenpost").

West German popular magazines also still find the Eastern market tough going. Price is one factor, but reader interests are another. Advertising agencies were the first to discover that tastes in visual and text terms are not yet the same in East and West.

The modernization of the press in the new federal states was not merely a German matter. Foreign publishers also had a part to play. However, such investment was not without risks. One major publisher failed in its attempt to launch a tabloid specially for the East. Several medium-sized firms have for the first time taken up large loans to pay for their Eastern commitments.

Recommended literature

Coing:	Ehrenschutz und Presserecht, Karlsruhe 1960.
Czajka:	Pressefreiheit und „öffentliche Aufgabe" der Presse, Stuttgart 1968.
Dagtoglou:	Wesen und Grenzen der Pressefreiheit, Stuttgart 1963.
Deutscher Presserat:	Jährliche Tätigkeitsberichte seit 1956, Bonn-Bad Godesberg.
von Gamm:	Persönlichkeits- und Ehrverletzungen durch Massenmedien, München 1969.
Gebhard:	Das Zeugnisverweigerungsrecht der Presse im Zivilprozeß, Bonn-Bad Godesberg 1975.
Geibel:	Mediendschungel, Stuttgart 1983.
Groß:	Grundzüge des deutschen Presserechts, Göttingen 1969.
ditto:	Verschwiegenheitspflicht der Bediensteten und Informationsrecht der Presse, Göttingen 1964.
Hamann/Lenz:	Das Grundgesetz für die Bundesrepublik Deutschland, Kommentar, 3. Aufl., Neuwied 1970.
Heinrichsbauer:	Die Presseselbstkontrolle, München1954.
Hoffmann-Riem/Plander:	Rechtsfragen zur Pressereform, Baden-Baden 1977.
Kölb:	Das presserechtliche Entgegnungsrecht und seine Verallgemeinerung, Berlin 1966.
ditto:	Die Schadenshaftung der Massenmedien, Sonderdruck aus "Materialien zum ausländischen und internationalen Privatrecht", Tübingen 1974.

ditto:	Medienwirkung und Medienverantwortung, mit Beiträgen von Hoffmann-Riem, Kohl und Lüscher, Überlegungen und Dokumente zum Lebach-Urteil des Bundesverfassungsgerichts.
ditto:	Kommunikation und Verantwortung (Konstanzer Universitätsreden), Konstanz 1973.
Leibholz/Rinck:	Grundgesetz, Kommentar an Hand der Rechtsprechung des Bundesverfassungsgerichtes, 5. Aufl., Köln 1975.
Löffler:	Presserecht, 2 Bde., 2. Aufl., München 1983ff.
Löffler/Golsong/Frank:	Das Gegendarstellungsrecht in Europa, Möglichkeiten der Harmonisierung, München 1974.
Löffler/Hebarre:	Form und Funktion der Presseselbstkontrolle in weltweiter Sicht, München 1968.
Löffler/Richter:	Handbuch des Presserechts, 2. Aufl., München 1986.
v. Mangoldt/Klein:	Das Bonner Grundgesetz, Kommentar, 2. Aufl., Bd. 1, Berlin 1957.
Meyn:	Massenmedien in der Bundesrepublik, erg. Aufl., Berlin 1968.
Möhl:	Das Zeugnisverweigerungsrecht der Presse in Straf- und Disziplinarverfahren, Bonn-Bad Godesberg 1973.
Publizistische Grundsätze	(Pressekodex), hrsg. vom Deutschen Presserat, Bonn-Bad Godesberg 1973.
Rebmann/Ott/Storz:	Das baden-württembergische Gesetz über die Presse, Stuttgart 1961.
Reh/Groß:	Hessisches Pressegesetz, Kommentar, Wiesbaden 1968.
Ricker:	Freiheit und Aufgabe der Presse, München 1983.

Schiwy/Schütz (Hrsg.): Medienrecht, Neuwied 1977.

Schneider, F.: Presse und Meinungsfreiheit nach dem Grundgesetz, München 1962.

Stammler: Die Presse als soziale und verfassungsrechtliche Institution, Berlin 1971.

Wenzel: Das Recht der Wort- und Bildberichterstattung, 3. Aufl., Köln 1986.

Press Law

for the Free and Hanseatic City of Hamburg

Dated 24 January 1965 (GVBl = Law Gazette of the Free and Hanseatic City of Hamburg p. 15) changed on 1/12/1969 (GVBl p. 233), 9/12/1974 (GVBl p. 381), 1/12/1980 (GVBl p. 361) and 5/2/1985 (GVBl p. 62)

The Senate hereby announces the following Law which has been adopted by the City Parliament:

Summary of contents

Art. 1	Freedom of the Press
Art. 2	Freedom of license
Art. 3	Public role of the Press
Art. 4	The Press's right of access to information
Art. 5	cancelled
Art. 6	The Press's duty of thoroughness
Art. 7	Printed matter
Art. 8	Masthead
Art. 9	Personal requirements of the responsible journalist
Art. 10	Definition of remunerated items published
Art. 11	Right of reply
Art. 12–18	cancelled
Art. 19	Responsibility under Criminal Law
Art. 20	Criminal violation of Press regulations
Art. 21	Contraventions of rules
Art. 22	cancelled
Art. 23	Statute of limitations
Art. 24	Closing regulations

Art. 1 Freedom of the Press

(1) The Press is free. It is committed to the basic order of freedom and democracy.

(2) The freedom of the Press is subject only to the limitations directly admissible under Basic Law and, in its framework, to those laid down in this Law.

(3) Special measures of whatsoever kind which adversely affect Press freedom are forbidden.

(4) Professional organisations of the Press with compulsory membership or any internal jurisprudence of the Press with sovereign powers are not admissible.

(5) The Press is also subject to those laws which apply to all.

Art. 2 Freedom of license

Press activities, inclusive of the establishment of a publishing enterprise or any other firm in the Press business, may not be rendered dependent upon any form of registration or admission.

Art. 3 Public role of the Press

The Press fulfils a public function in particular in that it procures news and disseminates it, declares opinion, voices criticism or participates in the process of opinion-forming in other manners.

Art. 4 The Press's right of access to information

(1) Public authorities are obliged to impart to representatives of the Press and of radio/TV information of service to them in the fulfilment of their public function.

(2) No claim to access to information exists if:

1. as a result, the proper execution of pending proceedings could be prevented, obstructed, delayed or jeopardised or if
2. rules of secrecy stand in the way or if

3. a superior public interest or a private interest worthy of protection would be injured as a result.

(3) General decrees forbidding a public authority to give information either to the Press as such or to that of a particular persuasion or to a particular periodical journal or newspaper are not admissible.

(4) The publisher of a newspaper or periodical can demand of public authorities that their official announcements be made available for use by him no later than to his competitors.

Art. 5 (cancelled)

Art. 6 The Press's duty of thoroughness

The Press shall use all necessary thoroughness in checking the content, origin and truth of all news prior to its publication. The obligation to maintain all printed matter free of punishable content (Art.19) remains unaffected.

Art. 7 Printed matter

(1) Printed matter under the terms of this Law comprises all printed material, intended for distribution, manufactured by means of printing press or other reproduction process for mass production, spoken sound recordings, video carriers and printed or written music with text or explanations.

(2) Printed matter furthermore includes the mimeographed material through which news agencies, newsletters, matrix circulars and similar enterprises provide the Press with material in words, images or in similar fashion. Also to be defined as printed matter are communications supplied by auxiliary Press editorial enterprises, regardless of the technical manner in which they are supplied.

(3) Not subject to the regulations of this law governing printed matter are:

1. official printed matter insofar as it contains only official communications,
2. material only intended for the purposes of commerce and transport, of domestic and social life, such as forms, price lists, printed advertising matter, family advertisements, business, annual and administrative reports, etc., as well as electoral ballot papers.

(4) Periodical printed matter comprises newspapers and periodicals and other printed material appearing in regular sequence – including irregular sequence — at intervals of no more than six months.

Art. 8 Masthead

(1) All printed matter appearing within the Free and Hanseatic City of Hamburg must contain the name of the party or firm and address of the printer and of the publisher; when the latter are identical, the name of the author or publisher must be included.

(2) Periodical printed matter must furthermore bear the name and address of the journalist responsible for its contents. If more than one journalist is responsible, the masthead must contain the details of each of them. This must stipulate for which part or specialised field each individual is responsible. The party responsible for the advertisement section must be named; here, regulations governing the journalist responsible for contents apply.

(3) Newspapers and allied newspapers which regularly print whole pages of the editorial section of the "parent" organ in their original entirety shall also name in their mastheads the journalist responsible for the section copied and the publisher responsible.

Art. 9 Personal requirements of the responsible journalist

(1) Not qualified to be employed as responsible editor or journalist is anyone who:

1. has his permanent residence outside the area of jurisdiction of the Basic Law;
2. as a result of a court judgment does not possess the liberty to hold public office, gain rights from public elections, or to vote on public matters;
3. has not yet completed the age of 18 years;
4. is not legally competent, or is only partially so.

(2) The regulations contained in Paragraph 1, No. 3 and No. 4 do not apply to printed matter published by juveniles or for juveniles.

(3) On application, the Interior Minister can waive the requirements of Paragraph 1, No. 1.

Art. 10 Definition of remunerated items published

If the publisher or the party responsible for a periodical Press organ has received remuneration for an item published or has requested or been promised such, the item concerned must be clearly marked with the word "Advertisement" if not already generally recognisable as an advertisement by virtue of placement or form.

Art. 11 Right of reply

(1) The responsible journalist or editor and the publisher of a periodical Press organ are obliged to publish a counter-version or reply by the person or party affected by an assertion of fact printed in the organ in question. This obligation extends to all subeditions of the organ in which the assertion of fact has been made.

(2) No obligation to print a reply or counter-version exists if the reply or counter-version is of inappropriate volume. The reply or counter-version is regarded as being of appropriate volume if it does not exceed the volume of the text to which objection has been raised. The reply or counter-version must be confined to factual assertions and must contain nothing of a punishable nature. It must be given in writing and must bear the signature of the injured party or legally recognised representative. The injured party or his representative can demand publication only if the reply is communicated to the responsible editor or publisher without delay, but at the latest within three months after publication of the item to which objection has been taken.

(3) The reply must be printed – in the same type of print as the text to which objection was taken, without additions or omissions and in the same section of the paper – in the next edition following receipt of the reply which has not yet been completed for publication; it must not appear in the form of a reader's letter. Publication is free of charge. Anyone who comments on the reply in the same edition must confine himself to factual comment.

(4) Ordinary legal channels are open to anyone wishing to appeal against rejection of a claim to right of reply. At the request of the allegedly injured party, a court can order the editor and publisher responsible to publish a counter-version as outlined in Paragraph 3. The regulations of Civil Trial Procedure with regard to procedure for temporary injunction shall apply in the case of these proceedings. There shall be no compulsion to bring evidence of jeopardy of entitlement.

(5) Paragraphs 1 to 4 do not apply to truthful reports on public meetings of the law-giving organs at federal, Land or communal level or of courts of law.

Art. 12 to 18 (cancelled)

Art. 19 Responsibility under Criminal Law

(1) The culpability for criminal offences perpetrated by means of published material is determined by the terms of general criminal law.

(2) If, through published matter, an offence is constituted under the terms of a criminal law and if

1. in the case of periodical publications, the responsible editor or journalist or,
2. in other publications, the publisher

knowingly or negligently violates his duty to maintain published matter free of punishable content, he shall be liable to punishment or imprisonment for up to one year or a fine insofar as he is not already punishable as perpetrator or participant under the terms of Par. 1.

Art. 20 Criminal violation of Press regulations

Imprisonment for up to one year or a fine can be imposed on whoever

1. as publisher, appoints as responsible editor or journalist a person who does not meet the requirements of Art. 9,
2. declares himself to be responsible editor or journalist while not fulfilling the requirements of Art. 9,
3. as responsible editor or journalist or as publisher – in a combined publishing house as author or publisher – of a publication with punishable content, contravenes the regulations governing mastheads (Art. 8).

Art. 21 Contraventions of rules

(1) A breach of regulations is committed by anyone who knowingly or negligently

1. as responsible editor or journalist or as publisher – as author or publisher in the case of a combined publishing concern – contravenes the rules governing Masthead (Art. 8) or, as entrepreneur, distributes material in which the details (masthead) prescribed by Art. 8 are wholly or partially not contained.
2. as publisher or as responsible party (Art. 8 Par. 2 Sent. 4) does not render any matter published in return for remuneration recognizable as an advertisement (Art. 10).

(2) Furthermore, anyone negligently causing the elements of an offence as defined in Art. 20 also acts in contravention of regulations.

(3) The deliberate contravention of regulations may be punished by a fine of up to ten thousand Deutsche Mark,or up to five thousand Deutsche Mark in case of negligence.

Art. 22 (cancelled)

Art. 23 Statute of Limitations

(1) The prosecution of criminal offences committed through the publication or distribution of published matter of punishable content or which otherwise constitute the elements of a criminal definition under this law become statute-barred in one year in the case of crimes and in six months in the case of breaches of regulations.

(2) Prosecution of offences defined in Art. 21 becomes statute-barred in three months.

(3) The statute of limitations commences with the publication or distribution of the published material. If the printed matter is published or distributed in parts or is revised, the statute of limitations re-commences with the publication or distribution of the further parts or editions.

Art. 24 Closing regulations

(1) This law shall take effect on 1 April 1965, except for Art. 23, which shall take effect on 1 October 1965.

(2) At the same time the Reich Press Law of 7 May 1874 (Reich Law Gazette, p. 65) is rescinded.

(3) The Law concerning the State Treaty on the establishment of the Norddeutscher Rundfunk concluded on 10 June 1955 (Hamburg Law Gazette, p. 197) is not affected.

DONE at Hamburg this 29th day of January 1965.

The Senate

German Press Council:
Press Code with guidelines for editorial work
(as of 1992)

1. Respect for the truth and accurate informing of the general public are the overriding principles of the press.

1.1 Exclusive agreements

The informing of the general public concerning events and happenings which, because of their importance, weight and significance, are of general interest and importance for political formation of public opinion and intent, must not be restricted or prevented by exclusive agreements or protective measures with the informants. Those who seek a monopoly of information prevent the rest of the press from acquiring news of this import and thus impinge upon the freedom of information.

1.2 Elections

It is a matter of journalistic fairness, serves the citizen's right to freedom of information, and upholds the equality of opportunity of democratic parties, when newspapers and magazines, in their reports on elections, also include opinions which are not those shared by themselves. This also applies to advertisements, which are also protected by the basic right to press freedom.

1.3 Press statements

Press statements compiled by authorities, parties, associations, clubs or other interest groups must be clearly defined as such when they are published without being edited.

2. The publication of specific news and information in word and picture must be carefully checked in respect of accuracy in the light of existing circumstances. Its sense must not be distorted or falsified by editing, title or picture captions. Documents must be accurately reproduced. Unconfirmed reports, rumours or assumptions must be quoted as such. When reproducing symbolic photographs, it must be clear from the caption that these are not documentary pictures.

2.1 Opinion polls

The German Press Council recommends news agencies, newspapers and magazines to give the number and representative nature of persons approached, and to state the time when the poll took place, as well as the commissioner, when publishing findings by public opinion-poll institutes.

If there is no commissioner, it should be pointed out that the poll was carried out on the private initiative of the institute itself.

2.2 Symbolic photographs

Should an illustration, in particular a photograph, be taken to be a documentary picture by a casual reader, although this is not the case, the situation must be clarified. For this reason,

- substitute or auxiliary illustrations (i.e. similar motive, different time, or different motive at the same time, etc.),
- symbolic illustrations (recreated scene, artificially recreated events to accompany text, etc.),
- photomontages or other changes

must be clearly marked as such for the casual reader, either in the caption or in the accompanying text.

2.3 Advance reports

A newspaper or magazine bears full journalistic, legal and press-law responsibility for advance reports published in a compressed form which announce a coming publication and which may be reproduced by news agencies. Abridgements or additions must not lead to a situation where the basic elements of the publication are given a new slant or prompt incorrect conclusions which may damage the justifiable interests of third parties.

2.4 Interviews

An interview is completely journalistically fair if it has been authorized by the interviewee or his representative. If time is scarce, it is also correct to publish unauthorized interviews, if it is clear to both the interviewer and interviewee that the statements made therein are to be published either verbatim or in an edited version. Journalists must always declare themselves as such.

An interview given orally or in written form is not mere news but rather a copyright work, if it has its own specific character due to critical utterances or comments. If the text of such articles are reproduced in full or in part the

newspaper or magazine concerned must state its source. If the basic content of orally-expressed thoughts is paraphrased, it is nonetheless a matter of journalistic honour to state the source.

In the case of advance reports of an interview care must be taken to protect the interviewee as co-author against any distortions or impairments which may jeopardize his justified intellectual or personal interests.

2.5 Embargoes

The one-sided imposition of embargoes during which the publication of certain information is held over is only justifiable if it is vital for objective and careful reporting. In principle they represent a free agreement between the informant and the media. Embargoes should only be observed if there is a justifiable reason, such as in the case of speeches still to be held, advance copies of company reports or information on a future event (meetings, resolutions, honours ceremonies etc.) Embargoes must not be used for publicity purposes.

2.6 Readers' letters

(1) By means of readers' letters the readers should have the chance to express their views and thus participate in the opinion-forming process. In this way the newspaper can also encourage discussion on its own opinion, public debate and civil initiative.

(2) Correspondence with the publisher or editorial department of a newspaper or magazine may only be printed as readers' letters if it is clear, due to form and content, that this is in accordance with the sender's wishes. Consent may be assumed if the letter refers to articles published by the newspaper or magazine concerned or to matters of general interest. The authors of such readers' letters have no legal right to have them published.

(3) It goes without saying that readers' letters are also subject to the usual practice of publishing the author's name. By sending the letter the reader is clearly displaying his willingness to have his name published.

(4) Only in exceptional circumstances may the name of the author be withheld at his request.

(5) The obligation to take care, contained in press laws, not to publish material of punishable content, also applies to readers' letters. Editors bear the full responsibility under press laws for readers' letters clearly containing assertions damaging to obvious third parties.

(6) The publication of fictitious readers' letters is a deception of the public and is not in keeping with the task of the press. If there is any doubt about the identity of the author, the editor is obliged to check its authenticity.

(7) If assertions are made about third parties in such a letter, those involved have the right according to press law to make a counterclaim.

(8) The right of refusal to give evidence also applies to authors of readers' letters. The reproduced letter is a publication according to this right and must be seen as part of the editorial section.

(9) General personal rights do not permit changes or abridgements to letters from known authors without the latter's consent. This also applies to letters which do not have an "individual character" and thus are not subject to copyright. Abridgements are only possible if the column contains a permanent reference to the editor's right to shorten letters. Should the author expressly forbid changes or abridgements, the editor must comply with his wish, even if he has the right to abridge, or else refuse to publish the letter.

(10) All readers' letters sent to the editor are subject to confidentiality. They must never be passed on to third parties.

3. Published news or assertions which subsequently turn out to be incorrect must be promptly rectified in an appropriate manner by the publication concerned.

3.1 Correction

The reader must be able to recognize that the previous article was wholly or partially incorrect. For this reason a correction publishing the true facts must also refer to the previous false article. The true facts are to be published even if the error has already been publicly admitted in another fashion.

Correction is the task of the editor. It is not permissible to evade the obligation to rectify by using solicited readers' letters.

4. Dishonest methods must not be used to acquire news, information or pictures.

4.1 Research

Research is a legitimate part of publicistic activity. Nonetheless the limits imposed by the constitution, the law and respect for human decency must

be observed. Untrue statements by a researching journalist about his identity and employer are irreconcilable with the reputation and function of the press.

Undercover research may be justifiable in individual cases if in this way information of particular public interest is gained which cannot be procured in another fashion.

In the case of accidents and natural disasters the press must take note that emergency services for the victims have priority over the public right to information.

The public interest in information is not a publicistic justification of any criminal acts which may be committed in the procurement of news.

5. On principle, confidentiality agreed upon at background briefings or informative meetings shall be adhered to.

5.1 Confidentiality

Should an informant stipulate, as a condition for the dissemination of his/her statements, that he/she remain unrecognizable as a source and thus protected from danger, this condition shall be respected.

Confidentiality may only be lifted if the information concerns the planning of a crime, in which case the journalist is obliged to inform the police. It may also be lifted if, after careful assessment of the considerations of property and interests, important reasons of state are predominant, which may be the case where the constitutional order is affected or jeopardized.

Confidential events and plans may be reported upon if, after careful consideration, it is seen that the public right to information has a higher priority than the reasons advanced for secrecy.

Criminal acts committed in procuring information are not justified by this guideline (see also guideline 4.1).

6. All those employed by the press shall observe professional secrecy, make full use of the right to refuse to give evidence and shall not disclose the identity of informants without their express consent.

6.1 Secret service activity

Journalists or publishers who engage in secret service activities damage the credibility of the press and destroy the basis of trust enjoyed by journalism.

6.2 Distinction between press and government functions

Should a journalist change his/her job and enter the service of a government or institution, all those involved should take care to make a clear distinction between his/her function as a journalist and that as a civil servant, especially where the latter function concerns the media. The same applies when a civil servant assumes a post as a journalist.

The reputation and credibility of the media is upheld when, by means of such a clear distinction (also from a contractual point of view), the appearance of double loyalty or conflict of interests between the two functions is avoided.

7. The responsibility of the press towards the general public requires that editorial publications are not influenced by the private and business interests of third parties. Publishers and editors must reject any attempts of this nature and make a clear distinction between editorial texts and publications for commercial reasons. Commercial texts, photographs and pictures must be clearly recognizable as such.

7.1 Distinction between editorial text and advertisements

Editorially compiled advertisements must be clearly recognizable as such to the casual reader, due to their typeface, order and form, which distinguishes them from the editorial section of the newspaper or magazine. They are to be clearly marked with the word "advertisement".
Should the orderer of the advertisement not be obvious from the text, he/she should be named in a prominent position. This also applies to supplements and special editions of all kinds financed by persons or institutions having a personal, economic or political interest in their contents.

If experts who are also interested parties contribute to such supplements, their relevant function is to be pointed out in the text. Texts with a public relations character related to advertisements are a deception of the public if they are not distinguishable from advertisements by their designation or structure.

7.2 Surreptitious advertising in editorial publications

Free editorial publications which refer to firms, their products, services or events, must not fall prey to surreptitious advertising. The danger of this is especially great if the publication goes beyond justified public interest or the reader's interest in information.

The press's credibility as a source of information requires particular care in dealing with PR texts and in producing separate editorial comments. Special editions are just as subject to editorial responsibility as all other editorial publications.

8. The press shall respect the private life and intimate sphere of persons. If, however, the private behaviour of a person touches upon public interests, then it may be reported upon. Care must be taken to ensure that the personal rights of uninvolved persons are not violated.

8.1 Publication of names and photographs

The publication of names and photographs of accused persons and victims in reports on accidents, crimes, investigations and court cases is in general not justifiable. The public's right to information must always be weighed up against the personal rights of those involved. Victims of accidents or crimes have a right to special protection. It is not necessary to name the victim in order to better understand the report of the accident or crime, except when that person enjoys historical fame or if the accompanying circumstances are of a higher-priority public interest. In the case of dependants who have nothing to do with the crime, the interest of these persons in preserving their personal rights takes precedence over the public's interest in information. The protection against naming victims and their dependants also includes the portrayal of criminal cases after the death of those involved. In such cases, it must be considered whether the case is of such importance for criminology that the perpetrator has thereby become a historical figure (see also guidelines 13.2 and 13.3).

8.2 Anniversary dates

The publication of anniversary dates of such persons as are otherwise not in the public eye requires that the editor confirms in advance whether those involved consent to publication or would prefer protection from public scrutiny.

8.3 Disease

Physical and mental disease of or damage to persons falls within their intimate sphere. The press, out of consideration for those involved and their dependants, should refrain from naming and including pictures of persons in such cases, as well as avoiding deprecating remarks concerning the disease or the hospital/institution, even if such remarks are to be heard or read among the general public. Historical or famous persons, even after their death, are protected by law against discriminating revelations.

8.4 Suicide

Reporting on suicide cases requires restraint. This particularly applies to the publication of names and the detailed description of the circumstances. Exceptions are only justifiable if the case is taken from current history and for which there is a public interest.

8.5 Opposition and escapes

In reports on countries where opposition to the government can mean danger for life and limb, press consideration must always be given to whether, by publishing names or photographs, those involved may be identified and persecuted in their home country. The same applies to reports on refugees. Details about such persons, the preparation and execution of escapes and routes may result in remaining relatives and friends being endangered or in existing escape routes being eliminated.

9. It is contrary to journalistic decorum to publish unfounded accusations, particularly those likely to injure personal dignity.

10. Publications in word and picture which could seriously offend the moral or religious feelings of a group of persons, in form or content, are irreconcilable with the responsibility of the press.

11. The oversensational portrayal of violence and brutality should be avoided. The protection of young persons is to be given consideration in reports.

11.1 Threats of violence and violent acts

In reporting on threats of violence and violent acts, the press should carefully weigh up the public's interest in information against the interests of the victims and other parties involved. It shall report on such things in an independent and authentic way, but shall not serve as the tool of criminals, nor shall it undertake independent attempts to mediate between criminals and the police.

11.2 Accidents and catastrophes

The borders of acceptability in reports on accidents and catastrophes are exceeded when the suffering of the victims and their dependants is not respected. Victims of misfortune must not be made to suffer a second time by their portrayal in the media.

11.3 Coordination with the authorities/news embargo

The press shall exercise restraint in reporting on threats of violence, without thereby neglecting their basic duty to inform. Coordination between the media and the police shall only occur if the action of journalists can protect or save the life and health of victims and other involved persons. The press shall comply with police requests for a partial or total news embargo in the interests of solving crime, if the request is convincingly justified and is not linked with an embargo on the part of national authorities.

11.4 Criminal memoirs

The publication of "criminal memoirs" may increase the publicity of an alleged or convicted criminal to a greater extent than is justified by the need to inform the public. Detailed descriptions of crimes from the exclusive viewpoint of the perpetrator, who may still be in custody, is not compatible with the responsibility of the press. There must be no interviews with criminals during the course of a crime.

12. There must be no discrimination against persons on racial, religious or national grounds or because of his or her sex.

12.1 Reports on crimes

When reporting on crimes, it is not permissible to refer to the alleged perpetrator's religious, ethnic or other minority membership unless this information is directly relevant to the event.

13. Reports on cases or investigations which are still sub judice must be free from prejudice. For this reason, before and during legal proceedings, all comment, both in portrayal and headline, must avoid being one-sided or prejudicial. An accused person must not be described as guilty before final judgment has been passed.

13.1 Investigations and court cases – prejudice – subsequent reporting

Reports on investigations and court cases are designed to inform the public in a careful and unbiased way about crimes, their prosecution and judgment. Suspects must be assumed innocent until they are proved guilty by the court.

Prejudicial portrayals and allegations are contrary to the constitutional protection of human dignity, which also applies to criminals without limitation.

In a state guided by the rule of law the aim of court reporting must not be that of socially punishing convicted criminals by using the media as a pillory.

There should be a clear distinction in reporting between suspicion and proven guilt.

The ban on portraying suspects as guilty before they are convicted also applies in the case of a confession.

Even if the suspect's guilt is obvious to the public, he or she must not be portrayed as having already been convicted until judgment has been passed by the court.

Should the press report on the unconfirmed conviction of a person mentioned by name or identifiable to a large circle of readers, journalistic fairness dictates that an ensuing, legitimately confirmed acquittal or quashing of proceedings also be reported on, insofar as the determinable interests of the person affected do not dictate to the contrary.

Criticism and commentary pursuant to a case must be easily distinguishable from the report on the case itself.

13.2 Publication of names and photographs of criminals, victims and accused persons

When publishing names and photographs of criminals, victims and accused persons, great care must be taken in weighing up the public's interest in information and the personal rights of those involved. Sensationalism is in no way justified by the public's right to information.

The printing of full names and/or pictures of suspects accused of committing serious offences is only justifiable when it is in the interests of solving the crime and when an arrest warrant has been issued.

In all cases where there is any doubt about the guilt of the suspect, publication of names and photographs should not take place.

The printing of names and pictures of uninvolved dependants is on principle inadmissible.

In the interests of the reintegration of convicted persons into society, publication of names and photographs following a court case should be avoided (see also guideline 8.1).

13.3 Historical or famous persons

There are limitations on the principles mentioned in guideline 13.2 in the case of holders of public offices or mandates, in so far as they are suspects, accused or convicted criminals.

In the case of such persons, publication of names and photographs may be admissible if there is a connection between their function and the crime.

In the case of historical or famous persons who do not hold public office or mandate, publication of names and photographs may be admissible if the crime of which they are accused runs contrary to their public image.

13.4 Crimes committed by young persons

When reporting on crimes committed by young persons and on their appearance in court, the press must exercise restraint out of consideration for their future. This also applies to young victims.

There is no objection to publishing names and photographs of missing young persons. Such publications should, however, only occur by agreement with the relevant authorities.

14. Reports on medical matters should not be of an unnecessarily sensationalist nature, since they might lead to unfounded fears or hopes on the part of some readers. Research findings which are still at an early stage should not be portrayed as if they were conclusive or almost conclusive.

14.1 Medical or pharmaceutical research

Articles on alleged successes or failures in medical or pharmaceutical research on the fight against serious illnesses require circumspection and a sense of responsibility. Neither text nor presentation should thus include anything which might awaken unfounded hopes of cure in the foreseeable future in ill readers and their dependants, if this does not coincide with the actual state of medical research.

Conversely, critical or one-sided reports on controversial opinions subject to debate should not make seriously ill persons unsure and thus raise doubts about the possible success of therapeutic measures.

15. The acceptance or granting of privileges of any kind which could possibly influence the freedom of decision on the part of publishers and editors are irreconcilable with the prestige, independence and responsibilities of the press. Anyone accepting bribes for the dissemination of news acts in a dishonourable and unprofessional manner.

15.1 Invitations or gifts

The acceptance of invitations and gifts which exceed the usual level in social intercourse and the level necessary in the line of duty may lead to an impairment of the freedom of decision and independent judgment on the part of newspaper companies and their staff.

(See also the German Press Council's declaration of 21 February 1961 in which it calls on all press and business associations to take the appropriate steps to help realize this principle.

See the relevant agreements between the German Journalists' Association and the Federal Association of Newspaper Publishers of 17 October 1961, and between the GJA and the Association of German Newspaper Publishers of 9 January 1961.)

16. It is considered fair reporting when a public reprimand issued by the German Press Council is published, especially by the newspapers or magazines concerned.

16.1 Publication of reprimands

The following applies to the newspaper or magazine concerned:

The reader must be informed of the false nature of the reprimanded publication and of the publicistic guideline violated by it.

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